

IR35 – STATUS CHECKLIST

As has been explained the key to IR35 is your status – are you a “disguised employee” or “genuinely self employed”. The tests for this are not set down in statute but have been built up via case law over a number of years – they are known as the “status tests” or “badges of trade”. They apply to all employment / self employment disputes and not just to IR35 – they have in the large part grown up around traditional industries and do not always sit well with the “knowledge industries” where PSCs are most common.

- Defined task – if you are engaged simply as a “helping hand” then this points towards employment. By contrast if you are engaged to carry out a specific task, at the end of which the engagement ends, then this points towards self employment.
- Control – if you are subject to control as to how your work is carried out then this points towards employment – if you are merely measured against agreed outcomes/deliverables and can work in your own manner then this points towards self employment.
- Method of payment – if you are paid by the hour/day/week then that points to employment – being paid for a project or task points towards self employment.
- Working hours – if you are contracted to work set hours then that points to employment – if you are contracted by reference to outcomes/deliverables then that points to self employment.
- Simultaneous contracts – if you work only for one client then that points towards employment – if you work for a number of clients, and even better if they overlap, then this points towards self employment.
- Risk – little or no commercial risk taken indicates employment – risk indicates self employment. Risks could be responsibility for rectification of errors and mistakes or financial risk of a project overrun.
- Responsibility for losses as well as profits – if the contractor is isolated against losses then that points towards employment – if there is a risk of losses then that points towards self employment. Of course with a labour only service, making a loss is difficult, but the general flavour of the contract must be for risk to sit with the contractor.
- Provision of equipment – if the clients equipment is used then that points towards employment – if its -the contractors then that points towards self employment. Obviously it is not practical for a one man company to provide large items, but PCs for working at home, laptop computers, basic home office equipment, hand tools, etc, point towards self employment.
- Business structure – do you have a business structure behind you, eg staff, office premises, a significant investment in equipment.
- Freedom to delegate and substitute – contracts of employment do not have a right of delegation or substitute. Where this right is included in the contract then it is a strong indicator of self employment. A recent Court of Appeal judgement, Express & Echo Publications v Tanton, held that where a contract allowed services to be carried out by someone other than the contractor then it was a contract for services (i.e. self employment) rather than a contract of service (i.e. employment); this applies even if the engager has a right of veto on the substitute.
- Bearing cost of correcting defective work and errors – if you do not bear the risks of correcting defective work and errors then this indicates employment – if you do bear this risk, eg by having to carry out remedial work in unpaid time or as part of a fixed price/outcome contract, then that is an indicator of self employment.
- Freedom to choose where and when you work – being tied to the clients site indicates employment – the ability to work at home indicates self employment.

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- Integration – if you are integrated into a clients organisation then that indicates employment – no integration indicates self employment. Integration in this context could be work as part of a team, inclusion by name on the employers stationery or promotional literature, being on call rotas.
- Mutuality – mutuality of obligations points towards employment, i.e. the client is obliged to offer you work and you are obliged to accept it – non mutuality points towards self employment.

By themselves none of these points are decisive, but taken together they help to paint a picture.

These tests have to be applied on a contract by contract basis – a “contract” in this context is any discrete piece of work. The results apply to the individual contract, so its possible to have a mixture of IR35 caught and non caught income at the same time.

However whilst the tests apply to individual contracts, the bigger picture also needs to be looked at – sometimes for convenience this is referred to as extra contractual matters – these can have a large positive impact on IR35. Some of the tests referred to above clearly lend themselves to the individual contract, eg substitution; others clearly lend themselves to being looked at extra-contractually, eg business structure tests.

The status pointers need to be used in the context of the Notional Contract between the worker and the client (see IR35 Basic Principles, IR35 Getting the Contract Right and IR35 Contract Review sections of this document).

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